BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

NANCY KAY KLAUSMEYER	)	
Claimant	)	
	)	
VS.	)	
	)	
PADGETT ENTERPRISES, INC.	)	
Respondent	)	Docket No. 1,023,549
	)	
AND	)	
	)	
NATIONWIDE MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) request review of the July 14, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

The ALJ found claimant was performing her regular job duties "on the clock" when she fell and was injured. Thus, her fall just outside the respondent's front door arose out of and in the course of her employment with respondent.

The respondent requests review of the preliminary hearing Order alleging the ALJ erred in concluding claimant's injury arose out of and in the course of her employment. Respondent maintains claimant was in the process of placing her purse into her car, an act which it considers strictly personal. Respondent argues that claimant's fall did not arise out of or in the course of her employment. Thus, in respondent's view, her injury is not compensable.

Claimant argues the ALJ's preliminary hearing Order should be affirmed. She contends that she was still in her employer's service when she lost her balance and "because the pavement was wet outside" she stepped and fell.[1]

The only issue to be decided in this appeal is whether claimant's accidental injury arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as respondent's office manager and bookkeeper. She was scheduled to work from 7:30 a.m. to 3:30 p.m., although she usually began her workday at 7:00 a.m. The office where claimant works is in a building with separate suites of offices and a common parking lot in front of the building.

On May 13, 2005, claimant began her workday as usual. At approximately 3:20 p.m., claimant began her normal routine for preparing to close up the office for the day and end her work duties. As was her routine, she went to take her purse to her car which is parked just outside the door to the suite of offices. On any other day, she would return to the office, close up the rear door to the office (which had been left open for the other employers to use), shutdown the computer and complete any final paperwork. After that, she would close and lock the door to the office and exit the suite. According to claimant, Mr. Padgett, respondent's owner, was aware of this routine.

As claimant left the office to put her purse in the car, she testified she hit her hip on the door frame, losing her balance as she stepped to the sidewalk and fell to the ground, breaking her left hip. She was able to crawl back into the office and summon help. Before claimant would allow the emergency medical personnel to remove her from the premises she made certain they locked the doors to respondent's business as she was not able to complete that task before she fell.

The ALJ concluded claimant's injury was compensable because she was performing her regular job duties when she fell. He reasoned that "[a]fter the ambulance arrived she had the EMTs finish the [c]laimant's job duties for that day. The [c]laimant was obviously still 'on the clock' when she was injured."[2]

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[1] P.H. Trans. at 9.

[2] ALJ Order (July 14, 2005).

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[3] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[4]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase 'out of' employment points to the cause or origin of the worker's accident and requires some causal connection between the accidental injury and the employment. An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase 'in the course of' employment relates to the time, place, and circumstances under which the worker's accident occurred and means the injury happened while the worker was at work in the employer's service.[5]

Based upon the parties' briefs, both components of this statute are at issue. While respondent focuses on arising "out of" her employment, suggesting that claimant was involved in a personal errand at the time of her injury, claimant focuses on whether her injury arose "in the course of" her employment and the fact that she had not yet left work.

The Board has considered the evidence contained within the record and finds the ALJ's preliminary hearing Order should be affirmed.

Claimant's normal working hours were 7:30 a.m. to 3:30 p.m. and the accident happened within those hours. She was apparently on her employer's premises at the time of her injury and had every intention of returning to the office and completing her workday after placing her purse in her car, a routine she normally followed. As did the ALJ, the Board finds claimant was still "on the clock" and had not abandoned her employer's service at the time of her injury.

Although not precisely on point, this instance is similar to those involving an employee's personal comfort when the law recognizes that there are periods of time when the employee is able to depart from the normal workday to engage in activities that are

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[3] K.S.A. 44-501(a).

[4] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

[5] *Id.*

generally recognized as necessary. Here, claimant's routine was to take her purse to her car and then return to the office and close up the business for the day. Respondent knew this was her routine. Her deviation from work was minimal and she fully intended to return to the office and complete her work duties. Claimant's deviation was not so drastic as to constitute an abandonment of her job duties.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.[6]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated July 14, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2005.

_____
BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[6] K.S.A. 44-534a(a)(2).